



January 30, 2002

HOUSE BILL No. 1378

DIGEST OF HB 1378 (Updated January 29, 2002 12:51 PM - DI 103)

Citations Affected: IC 8-1; IC 36-8; noncode.

Synopsis: Fiber optic communications and enhanced wireless services. Allows a certain class of cities to have access to the interstate right-of-way to install sewer and water lines. Requires the department of transportation to form a task force to identify barriers to the development of a multitenant conduit system for fiber optic communications along state highway rights-of-way. Reduces membership on the wireless enhanced 911 advisory board from 11 to seven. Allows current members to complete their terms. Makes the treasurer of state a voting member of the board. Eliminates term limits for board members. Eliminates the requirement that the board must use a third party audit in determining whether to adjust the wireless emergency enhanced 911 fee. Specifies procedures to be used by commercial mobile radio service (CMRS) providers in collecting and remitting the fee from prepaid subscribers. Specifies that the part of the fee to be used to implement phase two of a specified Federal Communications (FCC) order must be used to reimburse CMRS providers and public safety answering points (PSAPs) for their costs in implementing the order. Allows the board to invest the fees collected and to use the proceeds to reimburse CMRS providers and PSAPs. Provides that monthly distributions to reimburse PSAPs for costs in complying with the FCC order must be distributed to each county with eligible PSAPs based on the county's percentage of Indiana's population. Provides that the contents of an invoice submitted by a CMRS provider to the board must be sworn to and affirmed under penalty of perjury. Repeals a provision establishing five wireless board regions.

Effective: Upon passage; July 1, 2002.

Scholer, Crooks

January 15, 2002, read first time and referred to Committee on Commerce, Economic Development and Technology.
January 29, 2002, amended, reported — Do Pass.

HB 1378—LS 6892/DI 92+



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January 30, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1378

A BILL FOR AN ACT concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-9-6 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2002]: **Sec. 6. (a) This section applies to a city having a population**
4 **of more than forty-six thousand five hundred (46,500) but less than**
5 **fifty thousand (50,000).**

6 **(b) The department of transportation shall:**

7 **(1) grant the city access to the highway rights-of-way:**

8 **(A) maintained and owned by the Indiana department of**
9 **transportation; and**

10 **(B) located in the city; and**

11 **(2) permit the city to install water and sewer lines:**

12 **(A) in the highway rights-of-way maintained and owned by**
13 **the Indiana department of transportation and located in**
14 **the city; and**

15 **(B) beginning not more than twenty (20) feet from the curb**
16 **(as defined in IC 8-23-1-18).**

17 SECTION 2. IC 36-8-16.5-5 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. As used in this

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chapter, "CMRS" refers to the commercial mobile radio service (as defined by 47 U.S.C. 332(d)(1)). The term includes the following:

- (1) Services commonly referred to as wireless.
- (2) Services provided by a wireless real time two-way voice communication device, including radio-telephone communications used in:
 - (A) cellular telephone service;
 - (B) personal communications service; or
 - (C) the functional or competitive equivalent of a radio-telephone communications line used in:
 - (i) cellular telephone service;
 - (ii) a personal communications service; or
 - (iii) a network radio access line.

(3) Any other wireless service that provides the user with direct access to a PSAP through the placement of a 911 call.

SECTION 3. IC 36-8-16.5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. As used in this chapter, "subscriber" refers to a **standard** subscriber ~~for or a prepaid subscriber of~~ CMRS service.

SECTION 4. IC 36-8-16.5-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 14.5. As used in this chapter, "prepaid subscriber" refers to a CMRS subscriber who pays in full prospectively for the service and is issued an Indiana telephone number or an Indiana identification number for the service.**

SECTION 5. IC 36-8-16.5-14.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 14.7. As used in this chapter, "standard subscriber" refers to a CMRS subscriber who pays retrospectively for the service and has an Indiana billing address for the service.**

SECTION 6. IC 36-8-16.5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 18. (a) The wireless enhanced 911 advisory board is established. The board is a body corporate and politic, and though it is separate from the state, the exercise by the board of its powers constitutes an essential governmental function.

(b) The following recommendations must be made to the governor concerning the membership of the board:

- (1) The executive committees of NENA and APCO shall jointly recommend ~~one (1) individual from each of the five (5) wireless board regions established by section 17 of this chapter: three (3)~~



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individuals.

(2) The CMRS providers authorized to provide CMRS in Indiana shall jointly recommend ~~five (5)~~ **three (3)** individuals.

(c) The board consists of the following ~~eleven (11)~~ **seven (7)** members:

(1) The treasurer of state or the treasurer's designee. The treasurer of state or the treasurer's designee is chairperson of the board for a term concurrent with the treasurer of state's term of office. However, the treasurer of state's designee serves at the pleasure of the treasurer of state. ~~The treasurer of state or the treasurer's designee may vote on an issue before the board only to break a tie vote.~~

(2) ~~Five (5)~~ **Three (3)** members for a term of three (3) years who are appointed by the governor after the governor considers the recommendations of the executive committees of NENA and APCO that are submitted under subsection (b)(1).

(3) ~~Five (5)~~ **Three (3)** members for a term of three (3) years who are appointed by the governor after considering the recommendations of the CMRS providers that are submitted under subsection (b)(2).

(d) A member's position may be filled by the member's designee who serves at the pleasure of the member.

~~(d)~~ **(e)** A vacancy on the board is filled for the vacating member's unexpired term in the same manner as the original appointment.

~~(e) A member may not serve more than two (2) consecutive three (3) year terms on the board.~~

(f) Each member appointed under subsection (c)(2) or (c)(3) shall submit the name of a designee to the board. The board shall maintain a list of approved designees. A member appointed under subsection (c)(2) or (c)(3) may appoint a listed designee to fill the member's position **under subsection (d) or to act on behalf of the member at a meeting of the board.** The designee serves at the pleasure of the appointing member.

(g) A member may vote by proxy through another member.

SECTION 7. IC 36-8-16.5-19, AS AMENDED BY P.L.116-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. A majority of the members of the board constitutes a quorum for purposes of taking action. Except as provided in section 39(b) of this chapter, the board may take action approved by a majority of the members of the board **present at a meeting of the board.**

SECTION 8. IC 36-8-16.5-24 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 24. The board shall select a third party to audit the fund every two (2) years to determine whether the fund is being managed in accordance with this chapter. ~~The third party auditor shall provide the audit to the board to use in determining whether to adjust the emergency wireless 911 fee under section 26 of this chapter.~~ The board shall pay for an audit by the third party auditor as an administrative cost of the board. ~~If the third party auditor finds that the wireless enhanced 911 fee structure does not reflect the actual costs required by the PSAPs and CMRS providers, the board shall reduce the fee to reflect the actual costs required by the PSAPs and CMRS providers.~~

SECTION 9. IC 36-8-16.5-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 25. Except as provided in section 34 of this chapter, the board shall assess a monthly ~~emergency~~ wireless **emergency** enhanced 911 fee on each CMRS ~~mobile telephone number that has a billing address in Indiana.~~ **subscriber.**

SECTION 10. IC 36-8-16.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 26. The board may adjust the ~~emergency~~ wireless **emergency** enhanced 911 fee that is assessed under section 25 of this chapter. The board shall assess the fees at rates that ensure full recovery over a reasonable period of time of costs incurred by CMRS providers and PSAPs to develop and maintain an enhanced wireless 911 system. The fees may not:

- (1) be raised or lowered more than one (1) time in a calendar year;
- (2) be raised more than seven cents (\$0.07) by an adjustment; or
- (3) exceed one dollar (\$1) per month for each telephone number.

SECTION 11. IC 36-8-16.5-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 30. Except as provided in section 34 of this chapter, each CMRS provider ~~as part of its monthly billing process,~~ shall **bill each CMRS mobile telephone number for collect the emergency wireless emergency enhanced 911 fee** ~~The as follows:~~

- (1) A CMRS provider **shall collect the fee from each standard subscriber as part of its normal monthly billing process and** may list the fee as a separate line item on each bill. If a CMRS provider receives a partial payment for a monthly bill from a CMRS **standard** subscriber, the CMRS provider shall apply the payment against the amount the CMRS **standard** subscriber owes to the CMRS provider before applying the payment against the fee.

- (2) A CMRS provider shall collect and remit to the board



under section 36 of this chapter fees from its prepaid subscribers in an amount equal to the fee amount multiplied by the number of active prepaid subscriber accounts on the last day of each calendar month.

SECTION 12. IC 36-8-16.5-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. A CMRS provider, as part of its monthly billing process, may not pro-rate the monthly ~~emergency~~ wireless ~~emergency~~ enhanced 911 fee collected from the subscriber.

SECTION 13. IC 36-8-16.5-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 32. A CMRS provider is not required to take legal action to enforce the collection of the ~~emergency~~ wireless ~~emergency~~ enhanced 911 fee for which a subscriber is billed. However, a collection action may be initiated by the board. A court finding for the board in the action may award reasonable costs and attorney's fees associated with the collection action.

SECTION 14. IC 36-8-16.5-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 33. The wireless ~~emergency~~ enhanced 911 fee is exempt from state and local taxation.

SECTION 15. IC 36-8-16.5-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 34. A CMRS number is exempt from the ~~emergency~~ wireless ~~emergency~~ enhanced 911 fee if the subscriber is any of the following:

- (1) The federal government or an agency of the federal government.
- (2) The state or an agency or instrumentality of the state.
- (3) A political subdivision (as defined in IC 36-1-2-13) or an agency of a political subdivision.

SECTION 16. IC 36-8-16.5-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 35. A CMRS provider may keep two percent (2%) of the ~~emergency~~ wireless ~~emergency~~ enhanced 911 fee collected each month from each subscriber for the purpose of defraying the administrative costs of collecting the fee.

SECTION 17. IC 36-8-16.5-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 38. To recover costs under section 37 of this chapter, a CMRS provider must submit a full, sworn, true, complete, and detailed cost recovery plan. The board must approve the plan before the CMRS provider may recover costs from the fund under section 37 of this chapter. ~~The board may not approve an invoice if:~~

- (1) reimbursement of a cost described in the invoice is not related



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1 to compliance with the requirements of the FCC order; or
 2 (2) payment of the invoice would result in payment of more than
 3 one hundred twenty-five percent (125%) of the total amount
 4 contributed to the fund by a CMRS provider;
 5 unless the board approved the cost before it was incurred by the CMRS
 6 provider.

7 SECTION 18. IC 36-8-16.5-39, AS AMENDED BY P.L.116-2000,
 8 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2002]: Sec. 39. (a) Except as provided by section 26 of this
 10 chapter and subsection (b), the fund must be managed in the following
 11 manner:

12 (1) Three cents (\$0.03) of the ~~emergency~~ wireless **emergency** 911
 13 fee collected from each subscriber must be ~~held~~ **deposited** in an
 14 ~~interest bearing~~ escrow account to be used ~~for~~ **to reimburse**
 15 **CMRS providers and PSAPs for costs associated with**
 16 **implementation of phase two (2) of the FCC order. The board**
 17 **may invest money in the account in the manner prescribed by**
 18 **section 23 of this chapter and may use the proceeds of the**
 19 **investments to reimburse CMRS providers and PSAPs under**
 20 **this subdivision.** The board shall reevaluate the fees placed into
 21 escrow not later than May 1, 2000. The board shall determine if
 22 the fee should be reduced, remain the same, or be increased based
 23 on the latest information available concerning the costs associated
 24 with phase two (2) of the FCC order.

25 (2) At least twenty-five cents (\$0.25) of the ~~emergency~~ wireless
 26 **emergency** 911 fee collected from each subscriber must be ~~held~~
 27 **deposited in an** escrow **account** and used to reimburse CMRS
 28 providers for the actual costs incurred by the CMRS providers in
 29 complying with the wireless 911 requirements established by the
 30 FCC order and rules that are adopted by the FCC under the FCC
 31 order, including costs and expenses incurred in designing,
 32 upgrading, purchasing, leasing, programming, installing, testing,
 33 or maintaining all necessary data, hardware, and software
 34 required to provide service as well as the costs of operating the
 35 service. **The board may invest money in the account in the**
 36 **manner prescribed by section 23 of this chapter and may use**
 37 **the proceeds of the investments to reimburse CMRS providers**
 38 **under this subdivision.** Except as provided by section 38 of this
 39 chapter, the ~~carrier~~ **CMRS provider** may only request funds for
 40 true cost recovery. The board may increase the amount held in
 41 escrow under this subdivision not more than one (1) time a
 42 calendar year. If the board adjusts the ~~emergency~~ wireless



emergency 911 fee under section 26 of this chapter within a calendar year, an adjustment to the amount held in escrow under this subdivision for the calendar year must be made at that time.

(3) Two percent (2%) of the ~~emergency~~ wireless **emergency 911 fee** collected from each subscriber may be used by the board to recover the board's expenses in administering this chapter. However, the board may increase this percentage at the time the board may adjust the monthly fee assessed against each ~~CMRS mobile telephone number subscriber~~ to allow for full recovery of administration expenses.

(4) ~~Money remaining in the fund~~ **The remainder of the wireless emergency 911 fee collected from each subscriber** must be held in escrow and used for monthly distributions to eligible PSAPs that provide wireless enhanced 911 service and that have submitted written notice to the board. The board shall maintain a list of eligible PSAPs. The fund held in escrow under this subdivision must be distributed in the following manner:

(A) ~~Ninety-eight percent (98%) must be distributed among~~ The board shall distribute on a monthly basis to each county containing one (1) or more eligible PSAPs, as identified by the county in the notice required under section 40 of this chapter, a part of the remainder based upon the county's percentage of the state's population (as reported in the most recent official United States census). ~~served by each PSAP. A county must use a distribution received under this clause to reimburse PSAPs that:~~

(i) are identified by the county under section 40 of this chapter as eligible for distributions; and

(ii) accept wireless enhanced 911 service;

for actual costs incurred by the PSAPs in complying with the wireless enhanced 911 requirements established by the FCC order and rules.

(B) ~~Two percent (2%)~~ The amount of the fee remaining, if any, after the distributions required under clause (A) must be distributed among the eligible PSAPs under a formula:

(i) established by the board; and

(ii) based on a PSAP's ~~CMRS 911 call volume~~. in equal shares between the escrow accounts established under subdivisions (1) and (2).

(b) Notwithstanding the requirements described in subsection (a), the board may transfer money between and among the accounts in subsection (a) in accordance with the following procedures:



(1) ~~A transfer must be approved by the affirmative vote of at least eight (8) board members. For purposes of acting under this subsection, the board must have a quorum consisting of at least one (1) member appointed under section 18(c)(2) of this chapter and at least one (1) member appointed under section 18(c)(3) of this chapter.~~

(2) A transfer under this subsection must be approved by the affirmative vote of:

(A) at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(2) of this chapter; and

(B) at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(3) of this chapter.

(3) The board may make transfers only one (1) time during a calendar year.

~~(3)~~ (4) The board may not make a transfer that:

(A) impairs cost recovery by CMRS providers or PSAPs; or

(B) impairs the ability of the board to fulfill its management and administrative obligations described in this chapter.

SECTION 19. IC 36-8-16.5-40 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 40. To be eligible to receive distributions from the fund under section 39 of this chapter, a PSAP must comply with the wireless enhanced 911 requirements established by the FCC order and rules. ~~adopted by the FCC under the FCC order. Distribution~~ **A county containing one (1) or more eligible PSAPs shall submit a written notice to the board that identifies each PSAP that complies with the FCC order and rules. Distributions under section 39 of this chapter to a PSAP county containing one (1) or more eligible PSAPs must begin in the first full month after the PSAP becomes eligible. board receives the county's written notice under this section. The county treasurer shall deposit the distributions as prescribed in section 43 of this chapter.**

SECTION 20. IC 36-8-16.5-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 42. (a) A CMRS provider shall submit to the board sworn invoices related to a request for reimbursement under section 39 of this chapter. **An invoice submitted under this section must contain language swearing or affirming, under the penalty of perjury, that the representations made in the invoice are accurate to the best of the signer's knowledge. The signer must be:**

(1) an employee or officer of the CMRS provider submitting



1 **the invoice; and**

2 **(2) designated by the CMRS provider to sign on its behalf and**
 3 **bind the CMRS provider to the representations made.**

4 The board may not approve an invoice ~~for submitted under this~~
 5 **section if reimbursement of costs that are a cost described in the**
 6 **invoice is** not related to compliance with the ~~wireless enhanced 911~~
 7 ~~service requirements established by~~ of the FCC order and the rules
 8 adopted by the FCC under the FCC order.

9 (b) If:

10 (1) the board receives a written complaint alleging that a CMRS
 11 provider has used money received under this chapter in a manner
 12 that is inconsistent with this chapter; and

13 (2) a majority of the board votes to conduct an audit of the CMRS
 14 provider;

15 the board may contract with a third party auditor to audit the CMRS
 16 provider to determine whether the CMRS provider has used money
 17 received under this chapter in a manner consistent with this chapter.

18 SECTION 21. IC 36-8-16.5-43 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 43. The distribution of
 20 ~~emergency wireless emergency enhanced 911 funds to the PSAPs by~~
 21 the board **for cost recovery by PSAPs under section 39 of this**
 22 **chapter** must be deposited by ~~a the county treasurer or a municipal~~
 23 ~~fiscal officer~~ in a separate fund set aside for the purposes allowed by
 24 section 41 of this chapter. The fund must be known as the _____
 25 (insert name of county) ~~or municipality~~ **wireless emergency telephone**
 26 system fund. The county treasurer ~~or the municipal fiscal officer~~ may
 27 invest money in the fund in the same manner that other money of the
 28 county ~~or municipality~~ may be invested, but income earned from the
 29 investment must be deposited in the fund set aside under this section.

30 SECTION 22. IC 36-8-16.5-46 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 46. Notwithstanding
 32 any other law, the board, a PSAP, political subdivision, CMRS
 33 provider, local exchange company, or an employee, director, officer, or
 34 agent of a PSAP, political subdivision, CMRS provider, or local
 35 exchange company, **or a member of the board or the board chair, or**
 36 **an employee, an agent, or a representative of the board chair** is not
 37 liable for damages in a civil action or subject to criminal prosecution
 38 resulting from death, injury, or loss to persons or property incurred by
 39 any person in connection with establishing, developing, implementing,
 40 maintaining, operating, and providing **enhanced** wireless 911 service
 41 in compliance with the requirements established by the FCC order and
 42 rules adopted under the FCC order, except in the case of willful or



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1 wanton misconduct.

2 SECTION 23. IC 36-8-16.5-17 IS REPEALED [EFFECTIVE JULY
3 1, 2002].

4 SECTION 24. [EFFECTIVE JULY 1, 2002] **Notwithstanding**
5 **IC 36-8-16.5-18, as amended by this act, a member appointed to the**
6 **wireless enhanced 911 advisory board under IC 36-8-16.5-18(c)(2),**
7 **before its amendment by this act, or under IC 36-8-16.5-18(c)(3),**
8 **before its amendment by this act, shall continue to serve on the**
9 **board until the expiration of the member's term. The governor**
10 **may not make a reappointment to any vacancy in the board under**
11 **IC 36-8-16.5-18(c)(2) or IC 36-8-16.5-18(c)(3), both as amended by**
12 **this act, until the total number of members of the board complies**
13 **with the total number of members of the board required by**
14 **IC 36-8-16.5-18, as amended by this act.**

15 SECTION 25. [EFFECTIVE UPON PASSAGE] (a) **As used in this**
16 **SECTION, "department" refers to the Indiana department of**
17 **transportation.**

18 (b) **Not later than July 1, 2002, the department shall form a task**
19 **force to identify barriers to the development of a multi-tenant**
20 **conduit system for fiber optic communications to be located in the**
21 **highway rights-of-way maintained and owned by the department.**

22 (c) **The task force formed under subsection (b) shall submit its**
23 **findings to the executive director of the legislative services agency**
24 **not later than November 1, 2002.**

25 (d) **This SECTION expires December 31, 2003.**

26 SECTION 26. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Technology, to which was referred House Bill 1378, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning utilities and transportation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1378 as introduced.)

FRY, Chair

Committee Vote: yeas 11, nays 0.

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